

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1528 of 2006

and

MP No.1 of 2006

Perumal Padayachi .. Petitioner

vs

1.Vasudevan
2.Mannathan .. Respondents

Civil revision petition preferred under Sec.115 of the Code of Civil Procedure against the fair and decretal order dated 24.1.2006 passed in I.A.No.2377 of 2005 in O.S.No.299 of 2003 on the file of the Principal District Munsif, Cuddalore.

For Petitioner : Mr.P.Mani

ORDER

Aggrieved over an order of the Principal District Munsif, Cuddalore, dismissing an application in I.A.No.2377 of 2005 to set aside an ex-parte order passed against the revision petitioner/second defendant in O.S.No.299 of 2003, a suit for declaration and recovery of possession, this revision has been brought forth.

2.The Court heard the learned Counsel for the petitioner and also looked into the order under challenge.

3.The only contention put forth by the learned Counsel for the petitioner is that it was a suit for declaration and recovery of possession; that the second defendant, the petitioner herein, was set ex-parte on 31.10.2003; that the instant application was filed seeking to set aside the same on the ground that he could not appear on that day; that he was suffering from viral fever, and under the circumstances, it has got to be set aside. The lower Court, after hearing the other side also by giving an opportunity to file counter, has dismissed the application, which, in the opinion of this Court, was perfectly done.

4.It is not in dispute that the suit was filed for declaration and recovery of possession. There were two defendants. The first

defendant was contesting the matter. The second defendant was set ex-parte on 31.10.2003. He made an application in the year 2005 stating that he was suffering from viral fever on that day, and hence, he could not be present in Court. The lower Court had no option than to dismiss the application for two reasons. Firstly, the petitioner was set ex-parte on 31.10.2003; but, the instant application was filed in 2005. The reason adduced was that he was suffering from viral fever. Having appeared through a Counsel in a pending matter, he cannot say that he came to know about the ex-parte order, and thus, the application was within time. But, the application was out of time. Secondly, the application was filed at the time when the matter was part-heard, and when the witness was examined. At that juncture, the instant application was filed. The lower Court has also pointed out that the application has emerged to make a delaying tactic, and hence, it was to be rejected. Hence, the order of the lower Court is sustained.

5. In the result, this civil revision petition is dismissed. No costs. Consequently, connected MP is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

The Principal District Munsif
Cuddalore

CRP NPD No.1528 of 2006

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